4-22-2010

State v. Kling Appellant's Brief Dckt. 37322

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE LICENSE SUSPENSION OF MATILDA K. KLING

STATE OF IDAHO,

Plaintiff-Appellant-Cross Respondent,

v.

MATILDA K. KLING,

Defendant-Respondent-Cross Appellant.

NO. 37322

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

HONORABLE R. TED ISRAEL, Magistrate Judge
HONORABLE ROBERT ELGEE, District Judge

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STATEMENT OF THE CASE

Nature of the Case

The state appeals from the district court's appellate decision affirming the dismissal of license suspension proceedings against Matilda Kling for refusing a blood or breath alcohol content ("BAC") evidentiary test.

Statement of the Facts and Course of the Proceedings

The state filed, on December 18, 2007, a suspension advisory indicating that Matilda Kling had refused a BAC evidentiary test on December 8, 2007. (R., pp. 9-10.) Kling filed a motion to dismiss, asserting that the notice form was vague and that she was entitled to dismissal because the advisory was not filed with the court within seven days of the refusal. (R., pp. 11-14.)

At the hearing on the motion the parties stipulated that Kling was stopped and arrested for DUI, read the advisory form, and refused the BAC test. (Tr., p. 5, Ls. 13-23.) The parties also stipulated to the admission of Exhibits A (the ticket issued Kling); B (a copy of the advisory provided to Kling); and C (a copy of Kling's driver's license). (Tr., p. 5, Ls. 2-25.) The court also took judicial notice of the probable cause affidavit.[1] (Tr., p. 6, Ls. 1-4.) Kling reiterated her claims that her license should not be suspended because the notice of suspension was not filed within seven days (Tr., p. 6, L. 8 – p. 7, L. 6) and the notice form was ambiguous "as it relates to out-of-state licensed drivers" (Tr., p. 7, Ls. 7-11). The

[1] The probable cause affidavit is not currently included in the appellate record. The lower courts have not addressed the issue of probable cause for the stop or the requesting of the test. If Kling does challenge probable cause on this appeal, the state reserves the right to augment the record with this affidavit.

magistrate concluded that filing the advisory in court more than seven days after the refusal violated Kling's right to due process. (Tr., p. 13, L. 19 – p. 14, L. 10.) The magistrate also dismissed the suspension case based on his conclusion that the advisory form was vague and inconsistent with the statute. (Tr., p. 14, Ls. 11-25; R., pp. 31-34.)

The state filed a timely appeal to the district court. (R., pp. 35-37.) The district court affirmed on the same grounds articulated by the magistrate. (R., pp. 126-38.) The state filed a timely notice of appeal to this Court. (R., pp. 139-46.)

ISSUE

Did the magistrate err by dismissing the license suspension proceedings?

ARGUMENT

The Magistrate Erred By Dismissing The License Suspension Proceedings

A. Introduction

The magistrate dismissed the license suspension proceedings on two bases. First, he concluded that the filing of the advisory with the court ten days after the refusal violated Kling's due process rights. (Tr., p. 13, L. 19 – p. 14, L. 10.) Second, he concluded that the advisory was vague as it related to seizing the license of out-of-state drivers. (Tr., p. 7, Ls. 7-11.) Neither of these bases has legal merit.

B. Standard Of Review

The Idaho Appellate courts will directly review the intermediate appellate decision of the district court by determining whether competent evidence supports the factual findings of the magistrate and whether the magistrate's conclusions of law flow from those facts. State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). Statutory construction is a question of law over which the appellate courts exercise free review. State v. Casey, 125 Idaho 856, 876 P.2d 138 (1994).

C. The Refusal License Suspension Process Does Not Require Any Filing By The State Within Seven Days And No Due Process Right Of The Driver Is Infringed By A Later Filing

Under Idaho's implied consent law a motorist reasonably suspected of DUI must perform a BAC test of the officer's choosing. I.C. § 18-8002(1). If the motorist refuses "his driver's license or permit shall be seized by the peace

officer and forwarded to the court and a temporary permit shall be issued by the peace officer ...." I.C. § 18-8002(4)(a). A written request for a hearing may be filed by the motorist within seven days, and a hearing held within 30 days. I.C. § 18-8002(4)(b). "The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing ...." I.C. § 18-8002(4)(b). The court "shall sustain" the civil penalty and license suspension "unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights." I.C. § 18-8002(4)(b).

It is a well established principle of statutory interpretation that "the clearly expressed intent of the legislature must be given effect, thus leaving no occasion for construction where the language of a statute is plain and unambiguous." State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996) (citations omitted). Here the statute is unambiguous. No time limit is imposed for the officer's forwarding of information to the court. The only issues before the court were whether the officer had legal cause to stop Kling; whether the officer in fact asked her to submit to a test; whether the officer had reasonable grounds to request the BAC test; whether the request for testing violated Kling's civil rights; whether the officer properly advised Kling of the information required by statute; whether Kling actually refused to take the test; and, if she refused, whether she had sufficient cause to do so. State v. Griffiths, 113 Idaho 364, 368, 744 P.2d 92, 96 (1987). Nothing in the statute gives the court the authority to let Kling avoid the consequences of her refusal based on the timing of the filing of paperwork with the court by the police. Compare Kane v. State, Dept. of

Transp., 139 Idaho 586, 83 P.3d 130 (Ct. App. 2003) (rejecting analysis nearly identical to magistrate's in context of administrative license suspension).

Even if the timing of the filing were an issue that could be reached by the court, there is no legal or factual justification for the conclusion that there was anything even close to a violation of due process. A finding of a due process violation from delay in the judicial process will result only if the defendant can establish prejudice from the delay. State v. Davis, 141 Idaho 828, 842, 118 P.3d 160, 174 (Ct. App. 2005) (addressing pre-accusation delay); State v. Gallipeau, 128 Idaho 1, 909 P.2d 619 (Ct. App. 1994) (addressing appellate delay).

In this case the official action was filing paperwork on Tuesday, December 18, 2007, instead of Monday, December 17, 2007, when the refusal happened on Saturday, September 8, 2007. There was never any claim of prejudice. The very idea that Kling was prejudiced by the timing of the filing is absurd. The magistrate's conclusion of a due process violation is without merit because Kling established no prejudice. The district court erred by not reversing on appeal.

D. Kling Did Not Prove That Her Refusal Was Justified

As stated above, the only issues before the court were whether the stop and BAC test request were based on reasonable cause or whether the request violated Kling's civil rights. I.C. § 18-8002(4)(b). Kling bore the burden of proving that her refusal to take the test was justified. Id. A driver may prevail by proving that she was "not completely advised of [her] rights and duties under the statute." State v. Griffiths, 113 Idaho 364, 370, 744 P.2d 92, 97 (1987). Not all inaccuracies in the advisory are fatal to suspension, however. In Head v. State,

137 Idaho 1, 43 P.3d 760 (2002), for example, an inaccuracy in the advisory regarding the consequences of exceeding the legal limit *if the test had been taken* did not justify Head's refusal to take the test, which refusal was instead based on his attorney not being present.

In this case the language of the statute is that the driver must be advised that "[her] driver's license will be seized by the peace officer and a temporary permit will be issued ...." I.C. § 18-8002(3)(b).[2] The advisory stated, "Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is currently valid you will be issued a temporary permit. Non-resident licenses will not be seized and will be valid in Idaho for thirty (30) days from the service of this notice of suspension unless modified or restricted by the court, provided the license is valid in the issuing state." (R., p. 9, ¶ 4.B.)

The notice "completely advised of [Kling's] rights and duties under the statute." State v. Griffiths, 113 Idaho 364, 370, 744 P.2d 92, 97 (1987). "[A] drunken driver has no legal right to resist or refuse evidentiary testing." State v. DeWitt, 145 Idaho 709, 713, 184 P.3d 215, 219 (Ct. App. 2008). The purpose of the rights notification "is to overcome an unsanctioned refusal by threat instead of force." State v. Woolery, 116 Idaho 368, 373, 775 P.2d 1210, 1215 (1989) (internal quotations omitted). A motorist has the "right to be correctly advised by the officer of the true consequences of refusing to take the blood-alcohol test ...." Beem v. State, 119 Idaho 289, 805 P.2d 495 (Ct. App. 1991). The notice in

[2] Elsewhere in the statutes it is made clear that the permit should be valid for 30 days unless extended by the court. I.C. § 18-8002(4)(a).

question accomplished all of this. It warned Kling of what, as far as we can tell from the record, *actually happened upon her refusal.* Kling certainly presented no evidence that the officer's actions after her refusal were different from what she had been warned they would be. The notice also apprised her of the legal consequences of her refusal – temporary driving privileges for 30 days followed by a one-year loss of privileges unless cause for the refusal was shown in court – yet she refused the test anyway. Because Kling was advised of her rights and duties under Idaho's implied consent law, the lower courts erred by dismissing the proceedings without imposing the required suspension of driving privileges and civil penalty.

There is no ambiguity in the form. It clearly notified Kling that if she refused testing her out-of-state license would only be valid in Idaho for 30 days unless she applied to the court and showed cause why her license should not be suspended. (R., p. 9.) As such it notified her of her rights and duties under the law. The lower courts erred in concluding that Kling was entitled to dismissal of the proceedings.

CONCLUSION

The state respectfully requests this Court to reverse the district court and the magistrate's order of dismissal and remand for further proceedings on whether Kling can show one of the justification allowed by law.

DATED this 22nd day of April 2010.

KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of April 2010 I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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